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ABSTRACT

An inquiry was conducted to evaluate which level of government in Nebraska should be responsible for funding the education of wards of the state and the court. The document presents an overview of Nebraska legislative history and the state-aid framework. LB 3, passed in 1992, was an attempt to eliminate the tuition charge to the state for all nonresident wards, whether placed in foster care or in an institution, as a mechanism to reduce state spending. In its final enacted form it eliminated state funding for the educational costs of wards placed in foster homes outside of their resident school districts. The document also discusses eight issues that have been raised during the debate over educational funding for wards. The first four issues deal with the source of educational funding only, whereas the last four concern program quality related to the source of funding. Although many interested parties argue that a shift in funding from the state to local school districts will adversely affect the delivery of educational services, it is concluded that there is no clear link between the funding source and program quality. In general, school districts have accepted responsibility for the educational component of residential and day-treatment programs for wards within their boundaries. Appendices contain pertinent Nebraska legislative history and legislation, three charts, and LB 3 Commission reports and recommendations. (LMI)

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Funding the Education of Wards of the State: Who Should Pay?

A Preevaluation Inquiry
Prepared at the Request
of the Legislative Program Evaluation Committee

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Introduction

On December 10, 1992, the Legislative Program Evaluation Committee directed the Legislative Program Evaluation Unit to conduct a preevaluation inquiry into educational funding for wards of the state and wards of the court. In compliance with Neb. Rev. Stat. Section 50-1206, the unit gathered information to provide the committee with sufficient background data to apply the screening criteria prescribed in Section 50-1207 and to identify whether this program is an appropriate topic for a complete program evaluation. There follows a presentation and brief assessment of the information gathered.

The reader should keep in mind that decisions regarding what level of government should fund a specified program are legislative policy issues. These issues are beyond the purview of the program evaluator unless it can be demonstrated that the choice of funding source somehow impacts the quality of service being delivered. Throughout the report, we have attempted to distinguish between issues relating to which level of government should fund the education of wards and those relating to the effect of the choice of funding source on program quality.

Background and Statutory History

Article VII, Section 1, of the Nebraska Constitution states that "the Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof." (See Appendix A.) In accordance with this provision, the Nebraska Legislature enacted a law to assure that children who become wards of the state or wards of any court in the state are not deprived of this guarantee of free education.

The current process of funding educational costs for wards of the state and wards of the court is contained in Neb. Rev. Stat. Section 79-445. (See Appendix B.) This section provides that "a school board or board of education may admit nonresident pupils to the district school, may determine the rate of tuition of the pupils, and shall collect such tuition in advance." Educational and transportation costs associated with a child's education shall be paid by the Department of Social Services "when the pupil as a ward of the state or ward of any court has been placed in a public school district other than the district in which he or she resided at the time he or she became a ward or has been placed in any institution which maintains a[n] [approved] special education program" not owned or operated by the pupil's resident school district. The state must also pay the educational costs of those individuals placed in county detention homes.

In FY90-91, $5.3 million was appropriated to fund the educational costs of wards of the state and wards of the court. The Department of Social Services spent $1.7 million on regular education costs and $3.6 million on special education costs. The total appropriation is expected to grow to $8 million by the end of FY94-95. In 1991-1992, there were 275,928 students (K-12) in public schools in Nebraska. In 1990-1991, the number of children who were wards of the state or wards of the court for whom payment was made was 1,072, or less than one-half of one percent of the total enrollment. (See Appendix C.)

The principle that the state should pay school districts to educate nonresident wards has a long history. The history of the statute which codified this principle provides insight into the original intent and subsequent operation and impact of the law. (See Appendix D.) In 1881, the law provided that "said [education] board may also admit to the district school nonresident pupils, and may determine the rates of tuition of such pupils, and collect the same in advance." Since 1881, the statute has been amended seventeen times, most often to expand the financial responsibility of the state with respect to funding the education of nonresident wards.

In 1972, the Legislature began to specifically grapple with the issue of state wards, and in that year the law provided that "[n]o tuition shall be charged for children who are residents of such district in foster homes by court order or by arrangements made by state or county welfare departments." However, in 1974, the Legislature reversed its policy and the law provided that "[w]hen the pupil has, as a ward of the state or as a ward of any court, been placed in a public school district other than the district in which he resided at the time he became a ward, the cost of his education shall be paid by the state under rules and regulations prescribed by the State Board of Education." In 1979, the Legislature expanded state payment to include wards placed in an institution which maintains an approved special education program, and, in 1980, the Legislature expanded state payment to include wards placed in county detention homes. In 1985, the Legislature transferred responsibility for payment from the State Board of Education to the Department of Social Services to increase efficiency in the payment process.

In 1992, the Legislature again began to debate the principle that the state should pay school districts to educate nonresident wards. LB 1272 was an attempt to eliminate the tuition charge to the state for wards who are nonresident foster children. This measure failed. During the third special session of the Ninety-second Legislature, LB 3 was introduced. (See Appendix E.) LB 3 was an attempt to eliminate all tuition charges to the state for all nonresident wards, whether placed in foster care or in an institution, as a mechanism to reduce state spending. In its final enacted form, LB 3 was amended to substantially include the provisions of LB 1272 and thus eliminated state funding only for the educational costs of wards placed in a foster home outside of their resident school districts.

As enacted, LB 3 effectively transferred educational costs from the Department of Social Services to the school district providing the foster child's education or to the state's special education fund program. The policy underlying this decision was that the school district in which a foster child resides should be responsible for the educational needs of that child because foster parents contribute to the property tax base supporting the school district. In contrast, state funding for wards placed in an institutional setting was viewed as appropriate, given that such institutions do not contribute property tax to the district.

LB 3 generated a significant amount of debate about what role the state should play with respect to the educational costs of wards. As a result, and in an attempt to answer many unanswered questions, the Legislature created an LB 3 Commission to undertake a review of the issues raised in debate. The commission was appointed by the Director of Social Services and the Commissioner

of Education to develop a consensus on procedures for funding the costs of education for wards of the state and wards of the court who qualify for such funding. The findings and recommendations of the commission will be summarized in a subsequent section of this assessment. (See pages 5–7.)

LB 92, introduced at the beginning of the first session of the Ninety-third Legislature once again proposes to eliminate state funding for the cost of education for all wards of the state and wards of the court placed outside their home districts, regardless of whether placement is in a foster home or an institution. The bill transfers the responsibility for the educational needs of wards to the resident school district, thereby eliminating any distinction in the funding process for wards and non-wards. (See Appendix F.)

Educational funding for wards of the state and wards of the court is part of a complex system designed to provide both equity and stability in funding the educational needs of the state. In order to fully understand all the policy dimensions of the issue and to evaluate the need for this program, it is important to understand the characteristics of the state educational funding formula and how each component of funding, including the cost of education for wards of the state and wards of the court, affects the overall state system.

Ward Funding and Nebraska's State Aid Framework

Sections 79-3801 to 79-3824 of the Neb. Rev. Stat. contain the Tax Equity and Educational Opportunities Support Act (LB 1059, 1990). LB 1059 was a major piece of legislation intended to (1) reduce reliance on local property taxes for the support of the public school system, (2) broaden the education tax base by earmarking a portion of income tax receipts for state aid to education, (3) increase state support from roughly 25% to 45% of the aggregate general fund operating expenses of school districts, (4) assure a greater level of equity of educational opportunities among districts, and (5) establish some limits on the growth of the general fund budgets of school districts.

The principles supported by the Legislature in the enactment of LB 1059 enunciate a philosophy based on the belief that the state should bear a larger portion of the cost of education than it has in the past, both to enhance equity among districts, and to create a more stable funding base.

Appendix G summarizes the state aid formula concept implemented by LB 1059. The enactment of LB 1059 was accompanied by an increase of one percent in the state sales tax rate and fifty-five hundredths percent in the state income tax rate. Each fiscal year since the enactment of LB 1059, a pool of money for state aid to education has been created by adding $136 million

in state General Fund monies (the base amount used which represents the amount of state aid distributed in 1989) to the receipts generated by the LB 1059 sales and income tax increases. This pool of state aid is distributed in two ways.

First, each school district is allocated an amount equal to 20% of the district's income tax liability two years prior to the current fiscal year. Second, if a district's needs, measured by the actual expenditures of comparable-size districts, are not met by a district's 20% income tax receipt allocation plus local property tax receipts and miscellaneous receipts (e.g., state ward and special education reimbursements), the district is eligible to receive additional money from the LB 1059 pool, in the form of "equalization aid", until the district's measured needs are met. (NOTE: Some districts do not receive equalization aid money because their needs are met by the amounts they receive through the 20% income tax receipt allocation, local property tax receipts, and miscellaneous receipts.)

Of the three sources of revenue available to a school district (income tax allocation, local property tax receipts, miscellaneous receipts), only the local property tax is a variable component. As a result, theoretically, the effect of eliminating state ward payments, or any other fixed receipt, could result in the need to increase local property taxes. However, it may not always be necessary for a school district to compensate for lost receipts through a higher property tax levy. For example, a loss of funding for an amount equal to one teaching position can sometimes be absorbed without violating established teacher/pupil standards.

It should also be noted that if the Department of Social Services does not continue to pay school districts for the cost of educating state wards, some of the cost will resurface in the state budget as special education costs. In this case, the State Department of Education will have to assume the cost. The fiscal note for the amended version of LB 3 illustrates this point well. It reads in part,

> In FY 1994, the General Fund savings to the Department of Social Services would be $2,404,651. Special education General Fund costs in the Department of Education would increase by $556,327. . . .
>
> This would require school districts to absorb the non-state share of educating state wards and wards of the court. The impact would vary from district to district and would depend on the number of non-resident wards residing in the respective districts.

In summary, the elimination of payments by the Department of Social Services to school districts for the regular education of

wards would represent a transfer of funding from the Department of Social Services to the state's special education fund and to local school districts. In theory, all districts could experience some increase in the local property tax levy. However, the most likely result would be that those districts which do not receive equalization aid would absorb the loss of the state ward receipts with or without a property tax increase, and those districts receiving equalization aid would most likely experience an increase in that aid which would virtually replace the lost state ward receipts.

Review of LB 3 Commission Report Findings

The LB 3 Commission was appointed by the Director of Social Services and the Commissioner of Education to develop a consensus on procedures for funding the costs of education for wards of the state and wards of the court who qualify for such funding. Commission membership included representatives from the State Department of Education, the Department of Social Services, and school districts and educational services units, private providers, foster parents, and legislative resource staff. LB 3 required that the commission "identify and define all potential placements for wards, examine the effect of such placements on the education of wards, determine the entity responsible for providing for the education of wards, study the method of identifying special education needs of wards, examine the methods of reimbursement under the Special Education Act and of payment of state aid relative to wards, and study any other related matters." The commission report represents a compromise on the responsibilities to be assumed by the state and local school districts with respect to ward funding.

The commission reports that "there should be a process which allows flexibility, yet establishes consistency, to address [the] special situations and the needs of children/youth who are wards of the state." According to the report, the system must integrate the responsibilities of the Department of Social Services and the State Department of Education to meet the social and emotional needs of children as well as their educational needs.

Specifically, the commission identified four areas which are impacted by LB 3. The commission found that the availability of day treatment programs (partial-day educational programs and therapy not provided by a school district) for foster children may suffer; that school districts must assume the financial responsibility to provide a free, appropriate education to all wards with disabilities who are living in foster homes within their school district; that the projected State General Fund savings in FY93-94 is $1.8 million; and that equalization aid, to the extent that a school district qualifies to receive it, would compensate a school district for most

revenue lost as a result of losing ward payments with respect to foster children.

As a result of these findings, the commission made the following recommendations for change:

- "The cost of education for any ward living in a family foster home who is unable to participate in the educational program provided or contracted for by the responsible school district because of his or her participation in a [day] treatment program arranged for by the Department of Social Services will be the Department of Social Services' financial responsibility." Similarly, "the cost of education of non-disabled wards residing in foster homes and attending public schools shall be the financial responsibility of the school district in which the foster home is located."

- "The cost of special education services for any ward with a disability placed in a public school setting outside his or her parents' resident school district shall be the Department of Social Services' financial responsibility, [including] placement in . . . foster family homes."

The commission also recommends that:

- The cost of education of all other state wards shall be paid by the Department of Social Services as established in LB 3; and

- "Funding of the Department of Education and Department of Social Services for the purpose of educating state wards should not be reduced."

The following discussion will attempt to analyze whether the wards program merits further examination and evaluation by the Program Evaluation Committee.

Summary of Issues

LB 3 was originally introduced as part of Governor Nelson's strategic budget initiative. There were no programmatic reasons related to efficiency or effectiveness offered in support of the bill. There were apparently no programmatic problems which were compelling enough, in the absence of the budget review, to cause the Department of Social Services to propose this change at an earlier point in time.

What follows is a brief discussion of eight issues which have been raised during the debate over educational funding for wards. The first four issues raise what are essentially policy questions related to the appropriate source of funding for the wards program. Such policy questions, devoid of programmatic implications, are not

generally proper subjects for program evaluation. The last four issues focus on questions raised by opponents of LB 3 about potential adverse effects on the quality and availability of educational services provided to wards which they believe would result from shifting funding responsibility to local school districts.

Issues Relating to Source of Funding Only

Can the elimination of state funding for the education of wards be justified as a state budget cutting measure?

While there is a budgetary benefit derived from LB 3 or LB 92, almost 25% of the $2.4 million General Fund savings anticipated under LB 3 in the Department of Social Services budget reappears as special education reimbursements in the State Department of Education budget. Approximately the same percentage of anticipated savings under LB 92 would reappear as special education costs for the State Department of Education because, as the Department of Social Services recently testified, "while 10.8% of all Nebraska school children receive special education services, 40% of the state wards for whom educational payments were made in 1990-91 were served in special education."

More significantly for the taxpayer, the budget reduction may translate into a higher property tax burden for the cost of education in his or her district if the district cannot absorb the lost state funding. While LB 3 and/or LB 92 can be justified as state budget cutting measures, the precise impact of this budget cut upon individual school districts is difficult to predict.

Should wards be treated similarly to non-wards with regard to educational funding?

The following statements in support of LB 3 are taken from testimony given by Mary Dean Harvey, Director of the Department of Social Services, to the Education Committee. Her comments suggest that there should be no distinction made between the mechanism used to fund the education of wards and the mechanism used to fund the education of non-wards.

> We should keep in mind that the public school districts have the responsibility to provide a free and appropriate education to their residents. . . . The big questions then are should wards of the state be treated differently, and is it efficient to have a separately administered program? . . . Ward's [sic] needs run the gamut from the need for regular education for a child to the need for special education for a multiple handicapped child. The same is

> true for the general population. Wards have a right to free public education just as non-wards do.

In contrast to this position, many who testified in opposition to LB 3 argued that there are valid reasons for continuing state funding for some wards. Two primary arguments were made, both related to wards' placement. First, group homes do not contribute property tax revenue to the school district. Second, it would be a burden on small school districts to require that they be responsible for the special education costs of wards placed in institutions or day treatment facilities by the Department of Social Services. Each of these arguments is addressed in a separate section.

Is it inconsistent for the Legislature to eliminate expenditures which move the state further away from the 45% funding target established in LB 1059?

In 1990, with the enactment of LB 1059, the Legislature revamped its approach to state aid to education. The statement of intent contained in Section 79-3802(2) reads in part,

> (2) It is the intent, purpose, and goal of the Legislature to create a system of financing the public school system which will:
> (a) Provide state support from all sources of state funding for forty-five percent of the aggregate general fund operating expenditures of school districts;

The annual report of the Nebraska School Finance Committee, established in LB 1059 to monitor progress toward the 45% goal, indicates that the goal has not yet been met and that the proportion of state funding is losing ground each year. (See Appendix H.) The resources provided to school districts through programs, including the state ward program, are a source of state funding. The transfer of these costs back to the school districts, as proposed under LB 3 and/or LB 92, would move the state further away from the 45% goal, and would appear to be inconsistent with the underlying philosophy expressed in LB 1059.

The Legislature, of course, is free to move away from its stance in LB 1059. However, such a decision is a policy choice, and, unless programmatic issues are raised in the process of arriving at the choice, program evaluation has no role to play in informing the decision that is made.

Should the state be responsible for funding the education of wards who reside in an institution or group home which does not contribute revenue to the local property tax base?

The original version of LB 3 proposed the elimination of Department of Social Services payments for all wards. The Appropriations Committee proposed an amendment which would, in part, maintain Department of Social Services payments for wards residing in groups homes and attending public schools. The following statement from the testimony of Liz Hruska, Budget Analyst with the Legislative Fiscal Office, was offered to explain the Appropriations Committee's rationale for the distinction between wards in foster care placements and those in institutions or group homes.

> If a family moved into a district with five kids their kids would be educated. Similarly, if a ward moves in with a family in a district the committee feels that they should be treated the same way. The reason they're separating out group homes, even though they may be attending a public school district, is generally those entities are nonprofit, so they aren't really part of the taxpayer base as a family would be in the district.

The final version of LB 3, which adopted this rationale, continued to provide for the funding of the education of wards in institutions and group homes and eliminated funding for those in foster homes. The LB 3 Commission suggests a few modifications to this overall funding strategy but fundamentally agrees with it.

Issues of Program Quality Related to Source of Funding

Will further changes in the source of funding for the wards program cause a temporary or ongoing disruption in the educational placement opportunities of some wards?

The most obvious circumstance in which there is a relationship between the source of funding and the quality of the program involves wards in need of day treatment or placement in a residential facility. (Day treatment is the provision of services, including education and therapy, on a partial-day basis by an entity other than the school district.) In this circumstance, many assume that tension will develop between the Department of Social Services and local school districts if either of their responsibilities are changed with respect to placement and that the quality of services will suffer.

At this point, the Department of Social Services is financially responsible for the overall welfare of wards and has unilateral

authority to place any ward in a residential facility or day treatment program. At the same time, local school districts help develop federally mandated individual education plans (IEPs) for wards residing in their districts. Because the school district does not have a financial interest in the placement of wards, it has no incentive to oppose a decision to place a ward in day treatment.

If the financial responsibility for ward placement is transferred to the school district, some have argued that a conflict between the Department of Social Services and school districts will result and that this conflict will disrupt services to wards. School districts which would have a financial interest, as well as authority to approve a ward's educational plan, could refuse to pay the cost of day treatment, choosing instead to provide for all the child's needs within the school setting. Such a decision might not, some argue, be in the best interest of the child.

The LB 3 Commission report expressed concerns about the effect transferring financial responsibility for wards to local school districts could have on day treatment placements.

> Prior to LB 3, school districts were typically not involved in the decision by the Department of Social Services to place a child in a day treatment program . . . nor did the District incur any financial responsibility. . . . Participation in a day treatment program is influenced by proximity to programs. Consequently the Department of Social Services must place the child in a foster care home within reasonable distance to the program to make it possible to attend day treatment and return home at night. Shifting financial responsibility and requiring school involvement in placement may further limit possible day treatment options.

As a result, the commission recommends that "the cost of education for any ward living in a foster home who is unable to participate in the educational program provided or contracted for by the responsible school district because of his or her participation in a treatment program arranged for by the Department of Social Services will be the Department of Social Services' financial responsibility. This is a change from LB 3."

Despite these concerns, placement and financial responsibility for such placement apparently have not been a problem under the system implemented by LB 3. Under LB 3, the educational costs for a ward placed in a foster home outside his/her resident district are the responsibility of the new school district. Day treatment programs and residential programs which were providing education to wards prior to the enactment of LB 3 and billing the

Department of Social Services are now billing the local school districts and the school districts are paying these costs. In reality, many school districts have contracted with day treatment facilities in the past to provide special education services to both non-wards and wards.

Should the educational and non-educational needs of wards be managed by the same agency in order to better integrate services?

This was apparently the judgment of the Legislature in 1985 when the state ward educational program was transferred from the State Department of Education to the Department of Social Services. The LB 3 Commission report impliedly supports this change and suggests the Department of Social Services is the best agency to manage educational services for most wards.

Does the elimination of state funding for the education of wards jeopardize community support for group homes?

Norm Yoder, Superintendent of the Henderson School District, testifying in opposition to LB 3 in its original form, maintained that the transfer of educational costs for wards would place a financial burden on the Henderson School District.

> In the Henderson District we have budgeted $115,000 for payments for wards of the court. Now, being a fairly small district that amounts to 8 percent of our total revenue budget. And we have a group home, Grace Children's Home, . . . it is licensed for 20 students. So they come in none of them being from the Henderson District. . . . Talking with the administration at the children's home they are actually only supported by the state for about 50 percent of the living cost for these students. So how do they raise the rest of these funds? They have to raise those funds in other ways and so they turn to the local constituents to raise a significant amount of that balance . . . for the cost of housing alone. Now in the Governor's proposal he's turning around and saying, well, that's all right but let's in addition put the whole burden on the community to fund for the education as well.

Mr. Yoder also testified he had been assured that if legislation were passed under which the Department of Social Services stopped reimbursing the school district for educational costs for wards in group homes, most of those lost monies would be replaced by LB 1059 equalization aid.

As part of this preevaluation inquiry, we interviewed Tim Kemper, Director of School Finance with the State Department of Education. He indicated that it was not possible to determine precisely how much of the ward payment to the Henderson School District would be replaced by equalization aid if the current payment were eliminated, or how much any particular district's property tax levy might have to be raised. However, in his opinion, the Henderson district would receive all or most of the lost revenue in the form of equalization aid.

In spite of the likelihood that lost monies would be replaced by equalization aid, some have pointed out the potential for adverse community reaction to the elimination of aid for wards in communities in which group homes are located. Such a reaction, even if based on an incomplete understanding of the funding issues, could adversely affect the community's relationship with the group home and impact its willingness to raise private funds for the group home's operation. However, without some evidence of the potential for community backlash, it is very difficult to evaluate the merit of this issue.

Would the elimination of all state funding for the education of wards, as proposed in the original version of LB 3 and in the current LB 92, further deteriorate the diminishing number of foster homes and group homes in Nebraska?

Dennis McCarville, Executive Director at Uta Halee Girls Village in Omaha and President of the Nebraska Association of Homes and Services for Children gave the following testimony to the Education Committee.

> We know the numbers of foster parents are going down in the state. The need for foster homes are going up. Anything that we do to stand in the way of providing good foster homes for children is a concern of ours in the association. . . . most small school districts have been struggling to provide adequate special ed for state wards as it is. Residential treatment centers that provide educational services to state wards currently are subsidizing this service about 33 percent. . . . The discontinuation of the state ward educational fund would affect children in foster homes, in group homes and in large group homes and residential centers all across the state. . . . I am very doubtful whether or not any of the state's, the special education funds, would immediately or automatically transfer to school districts. My concern would be that there'd be a battle that would ensue and we'd spend two,

> maybe three years trying to decide who pays. By that time, frankly, Uta Halee would not be around.

Mr. McCarville's primary criticisms relate to the original version of LB 3 which would have eliminated all state ward educational funding. Although his testimony paints a bleak scenario, he did not explain why he felt this scenario was inevitable. He did not make reference to the fact that because the education of state wards, like that of all children, is mandated, those costs must be picked up by the school district.

Conclusion

Decisions regarding what level of government should fund compulsory government functions, such as the education of state wards, are appropriately reserved for legislators charged with the formulation of public policy. If there is evidence to suggest that the choice of funding source would affect the quality of service, program evaluation can be employed to assess that issue.

With regard to the wards program, the evidence we have available suggests that, while many interested parties have expressed the opinion that a shift in funding from the state to local school districts will adversely affect the delivery of educational services, the reasons offered are generally speculative, and based on assumptions about the reactions of school districts and communities to a perceived additional financial burden. While the Department of Social Services reports some initial problems implementing LB 3, in general, school districts are accepting responsibility for the educational component of residential and day treatment programs for wards within their boundaries.

In the absence of a clear link between funding source and program quality, and given the difficulties inherent in trying to compare the quality of state funded versus locally funded education for wards, we would recommend that the Program Evaluation Committee not undertake additional evaluation of this issue.

APPENDICES

A. Guiding Principles & Policies (Prepared by LB 3 Commission)

B. Current copy of Nebraska Revised Statutes Section 79-445

C. Relevant Facts and Figures (Prepared by LB 3 Commission)

D. Legislative History, Section 79-445

E. Summary LB 3, Third Special Session, 1992

F. Summary LB 92, First Session, 1993

G. Chart: Nebraska State Aid Formula Concept For 1992-93 Payments

H. Chart: Long Term Trend—LB 1059

I. Chart: Who Pays For Wards Placed Out-of-District

J. LB 3 Commission Report

K. Descriptions of Types of Living Arrangements (Prepared by LB 3 Commission)

APPENDIX A

Guiding Principles & Policies

-"The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof."
Constitution of Nebraska, article VII-Education, Section 1 Amended, 1940, 1952, 1954, 1970, 1972.

-"Notwithstanding any other provision in the Constitution, appropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or a political subdivision thereof; provided, that the Legislature may provide that the state or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of twenty-one years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature."
Constitution of Nebraska, Article VII-Education, Section II.

-"It shall be the duty of the Board of Education of every school district to provide or contract for special education programs for all resident children who could benefit from such programs." (Nebraska Rev. Stat. 79-3320)

-"School districts shall insure that all children with verified disabilities from date of diagnosis to age twenty-one, have available to them a free appropriate public education which includes special education and related services to meet their unique needs." (92 NAC 51)

-"When any child under age 18 is found by a court to be abused, neglected or dependent, the court may permit the child to remain in his/her own home or may make an order committing the juvenile to the Department of Social Services." (Taken from Section 43-284, Reissue, Revised Statutes of Nebraska, 1943.) This applies to wards found to be status offenders and delinquents as well.

- "When the court awards a child to the care to the Department of Social Services, the Department shall have authority by and with the assent of the court to determine the care, placement, medical services, psychiatric services, training and expenditures on behalf of the child." (Taken from Section 43-285, Reissue Revised Statutes of Nebraska, 1943.)

SOURCE: Appendices, LB3 Commission Report.

DOCUMENT: 79-445

HEADING Chapter 79. Schools.
CATCHLINE Nonresident students; admission; tuition; persons exempt.
LAW 79-445. (1) A school board or board of education may admit nonresident pupils to the school district, may determine the rate of tuition of the pupils, and shall collect such tuition in advance except as otherwise provided in this section.

(2) When the pupil as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Social Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the pupil's resident school district, the cost of his or her education and the required transportation costs associated with the child's education shall be paid by the state, but not in advance, to the receiving school district or approved institution or paid to the county nonresident high school tuition fund under rules and regulations prescribed by the Department of Social Services. Any pupil who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Social Services or a foster home maintained or used by the Department of Correctional Services pursuant to section 83-108.04 shall be deemed a resident of the district in which the foster family home or foster home is located.

(3) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of such individual's district of residency, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(4) No tuition shall be charged for children who may be by law allowed to attend the school without charge. The school district in which the parent or guardian of any nonresident pupil maintains his or her legal residence shall not be liable for the payment of tuition and the children of school age of such parent or guardian shall be entitled to free common school privileges the same as any child who is a bona fide resident of such school district whenever the parent or guardian of such nonresident pupil, having entered the public service of the State of Nebraska, has moved from the school district in which he or she maintains legal residence into another school district for temporary purposes incidental to serving the state, without the intention of making the school district to which the parent or

guardian has moved his or her legal residence. No tuition shall be charged for a child whose parents are divorced if such child attends school in a district in which either parent resides. The burden of proof as to legal residence shall rest with the person claiming legal residence in any district. The school district may allow a pupil whose residency in the district ceases during a school year to continue attending school for the remainder of that school year without payment of tuition.

(5) The school board or board of education may admit nonresident pupils to the school district without requiring the payment of tuition if such pupils are in the actual physical custody of a resident of the school district and are not residents of an adjoining school district and the school board or board of education determines that the pupils would otherwise be denied guaranteed free common school privileges.

(6) The changes made to this section by Laws 1992, LB 3, Ninety-second Legislature, Third Special Session, shall apply to all reimbursements under this section for school year 1992-93 and all school years thereafter.

APPENDIX C

Relevant Facts and Figures

-Number of children between 5-18 in Nebraska as of 1990 =390,406 (US Census Bureau) This includes children *not* in school and children in private or home schools.

-Number of student, K-12, in Public Schools in Nebraska for 1991-1992 school year as of 9-27-91 =275,928.

-Estimated number of children and youth age 5-18 who were wards of the state as of 12-31-91 =3839. This includes children in out of home care in the custody of DSS, Juvenile Parole, Mental Retardation Agencies, Department of Public Institutions, county detention centers and courts plus children placed with private agencies. (Information from the Ninth Annual Report of the Nebraska State Foster Care Review Board.)

-Number of children/youth who are wards of the state for whom payment was made in 1990-91 school year =1072. Of these, 430 were identified as Special Education students by the school district.

-Funding History: Prior to fiscal year 1986, the Education for State Wards Program was administered by the Department of Education. Expenditures for the last 5 fiscal years:

Fiscal year 1988	$3,159,111
Fiscal year 1989	$3,211,916
Fiscal year 1990	$3,538,210
Fiscal year 1991	$4,171,738
Fiscal year 1992	$5,174,997

SOURCE: Appendices, LB3 Commission Report, January 1993.

APPENDIX D

Legislative History, Section 79-445

1881: "Said board may also admit to the district school non-resident pupils, and may determine the rates of tuition of such pupils, and collect the same in advance; provided, that any person having real property in two adjoining districts may, with the consent of the district board where he resides, send the pupils of his family to the school in such adjoining district without tuition charge, by giving ten days' notice to the school board of such adjoining district: provided further, that a pro rata share of the school money apportioned to the district where such pupils reside shall be paid by the officers of that district to the district where said pupils attend school: provided further, that in no case shall tuition be collected from non-resident pupils where the school board of pupil's residence consent to attendance in adjoining district, then the school money due the district where pupils reside, shall be paid to the district where pupils attend school: provided further, that non resident pupils shall not be allowed to attend high or graded schools in any incorporated village or city, unless by consent of the trustees or board having control of said high or graded schools."

1883: Amends 1881 law to read "Said board may also admit to the district school non-resident pupils, and may determine the rates of tuition of such pupils, and collect the same in advance".
1901: Amends the law to read "Said board may also admit to the district school non-resident pupils, and may determine the rates of tuition of such pupils and collect the same in advance, but no tuition shall be charged such children as are or may be by law allowed to attend such school without charge."
1921: Amends the law by adding a proviso to previous law that parents shall not be responsible to pay tuition for a non-resident pupil and children shall be entitled to free common school privileges when said parents are in public service and temporarily move out of resident district.
1927: Adds that the tuition rate shall not exceed one dollar in rural schools except where tuition is paid by school board of non-resident.
1947: 1927 language eliminated. Back to 1901 and 1921 language.
1949: Adds that the burden of proof as to legal residence shall rest with the person claiming legal residence in any district.

1972: Adds that no tuition shall be paid for foster children placed in another district by court order.
1974: Eliminates 1972 foster-children provision and adds that the state will pay for the education costs of non-resident pupils who are wards of the court or wards of the state, including foster children.
1979: Adds that the state will pay for the education costs for nonresident pupils who are placed in special education institutions to the receiving school district or approved institution.
1980: Two amendments: First, that the state will pay any transportation costs, and second, that the state will pay for the education costs of non-resident pupils in detention homes.
1982: Adds that a child will be a resident of the district of either parent if the child's parents are divorced.
1984: Two amendments: First, that the state may pay into a "county nonresident tuition fund", and second, that if residency ceases, a child may complete the school year.
1985: Two amendments: First, that children who are in "physical custody of a resident" and "not residents of an adjoining school district", and a determination that denial would abridge children's right to free education, may be admitted as residents of the district, and second, that the Department of Social Services may prescribe rules and regulations.
1991: Adds that state may pay costs of educating wards who have been placed in any institution which maintains an approved special education program and such institution is not owned or operated by the pupil's resident school district.
1992: Technical changes; Return to 1972 language which eliminates the tuition charge for foster children placed in another school district who are wards of the court or wards of the state.

SOURCE: Legislative Program Evaluation Unit, January 1993.

APPENDIX E

Summary LB 3, Third Special Session, 1992

SECTION 1. Amends section 79-445.

(1) A school board or a board of education may admit nonresident pupils to its school district and may determine the rate of and collect in advance the tuition for those pupils. Except as provided.

(2) If a pupil is a ward of the state or the ward of any court and

(a) has been placed in a school district other than the school district in which the pupil resided prior to being a ward and does not reside in a licensed foster family home or a foster home maintained by the Department of Correctional Services, or

(b) has been placed in an institution which maintains an approved special education program and such institution is not owned or operated by the pupil's resident school district

then the educational costs of the pupil and the required transportation costs shall be paid by the state, not in advance, to the receiving school district, to the approved institution, or to the county nonresident high school tuition fund.

Any pupil who is a ward of the state or a ward of any court who resides in a licensed foster family home or a foster home maintained by the Department of Correctional Services shall be deemed a resident of the school district in which the foster family home or foster home is located.

(3) If an individual is eighteen years of age or younger and a ward of the state or any court and is placed in a county detention home, educational costs shall be paid by the state, regardless of the individual's residency, to the agency or institution which has been selected, contracted, and approved by the county board with jurisdiction over such agency or institution.

(4) No tuition shall be charged for children who may be by law allowed to attend the school without charge.

The school district in which the parent or guardian of any nonresident pupil maintains legal residence shall not be liable for the educational costs of such pupil when the parent or guardian has entered public service of the state and has moved for temporary purposes incidental to serving the state and would be otherwise entitled to free common school privileges.

No tuition shall be charged for a child whose parents are divorced if such child attends school in a district in which either parent resides. The burden of proof as to legal residence rests with the person claiming residency.

A school district may allow a pupil to continue attending the school district for the remainder of that school year after residency in the district ceases during a school year without payment of tuition.

(5) The school board or board of education may admit nonresident pupils to the school district without requiring the payment of tuition if such pupils are in the "actual physical custody" of a resident of the school district and are not residents of an adjoining school district and the school board or board of education determines that the pupil would otherwise be denied guaranteed free common school privileges.

(6) LB 3 changes shall apply to all reimbursements under this section for the 1992-93 school year and all school years thereafter.

SECTION 2. LB 3 Commission Established.

The Director of Social Services and the Commissioner of Education shall appoint a joint commission to examine the procedure for funding the education of wards of the state and wards of the court. The commission shall report its findings, conclusions, and recommendations to the Legislature on or before January 15, 1993.

APPENDIX F

Summary LB 92, First Session, 1993

SECTION 1. Amends section 79-445.

(1) A school board or a board of education may admit nonresident pupils to its school district and may determine the rate of and collect in advance the tuition for those pupils. Except as provided.

(2) For the 1992-93 school year, if a pupil is a ward of the state or the ward of any court and

> (a) has been placed in a school district other than the school district in which the pupil resided prior to being a ward and does not reside in a licensed foster family home or a foster home maintained by the Department of Correctional Services, or
>
> (b) has been placed in an institution which maintains an approved special education program and such institution is not owned or operated by the pupil's resident school district

then the educational costs of the pupil shall be paid by the state, not in advance, to the receiving school district or approved institution.

For the 1993-94 school year and all school years thereafter, such costs shall not be paid by the state.

Any pupil who is a ward of the state or a ward of any court who resides in a licensed foster family home or a foster home maintained by the Department of Correctional Services shall be deemed a resident of the school district in which the foster family home or foster home is located.

(3) For the 1992-93 school year, if an individual is eighteen years of age or younger and a ward of the state or any court and is placed in a county detention home, educational costs shall be paid by the state, regardless of the individual's residency, to the agency or institution which has been selected, contracted, and approved by the county board with jurisdiction over such agency or institution.

For the 1993-94 school year and all school years thereafter, such costs shall not be paid by the state.

(4) No tuition shall be charged for children who may be by law allowed to attend the school without charge.

The school district in which the parent or guardian of any nonresident pupil maintains legal residence shall not be liable for the educational costs of such pupil when the parent or guardian has entered public service of the state and has moved for temporary purposes incidental to serving the state and would be otherwise entitled to free common school privileges.

No tuition shall be charged for a child whose parents are divorced if such child attends school in a district in which either paren. resides. The burden of proof as to legal residence rests with the person claiming residency.

A school district may allow a pupil to continue attending the school district for the remainder of that school year after residency in the district ceases during a school year without payment of tuition.

(5) The school board or board of education may admit nonresident pupils to the school district without requiring the payment of tuition if such pupils are in the "actual physical custody" of a resident of the school district and are not residents of an adjoining school district and the school board or board of education determines that the pupil would otherwise be denied guaranteed free common school privileges.

(6) LB 3 changes shall apply to all reimbursements under this section for the 1992-93 school year.

APPENDIX G

NEBRASKA STATE AID FORMULA CONCEPT FOR 1992-93 PAYMENTS

NEEDS

Determined by Actual Expenditures of Comparable-Size School Districts

- Computed separately for elementary and high school grades.
- Each district's needs are based on students enrolled in its schools plus resident students it pays tuition for elsewhere.

\-

RESOURCES

Local Property Tax Resources	+	Allocated State Income Tax Funds	+	Other Actual Receipts
~ Yield from Local Effort Rate*: For Class II-VI districts, this includes yield from high school local effort rate for formerly "freestanding" Class I property merged, joined, or affiliated with the high school districts since the most recently available complete data year.		~ Each district receives 20% of the state income taxes which district resident individuals paid to the State.		~ Public Power District Sales Tax ~ Fines + License Fees ~ Nonresident High School Tuition** ~ All Other Tuition Receipts ~ Transportation Receipts ~ Interest on Local Investments ~ Other Miscellaneous Local/County Receipts ~ Special Education ~ Wards of the Court/State ~ Proceeds from the Temporary School Fund ~ Insurance Tax Fund ~ Prorate Motor Vehicle ~ Other Miscellaneous State Receipts ~ Impact Aid (To extent allowable by Federal Law.) ~ Other Noncategorical Federal Receipts

*Annually determined based upon level of available state equalization dollars.

** From 1992-93, rather than from 1990-91

=

EQUALIZATION AID

State Appropriation to offset local needs not met by other available sources.

WITHIN AN AFFILIATED SCHOOL SYSTEM

- The "Needs" of the individual districts, or portions thereof, which are affiliated are combined to determine the "Needs" of the Affiliated School System.
- The "Resources" of the individual districts, or portions thereof, are combined to determine "Resources" of the Affiliated School System.
- The resulting equalization aid, if any, is paid to the individual districts in the affiliated system based on their relative contribution to the generation of the aid.

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APPENDIX H

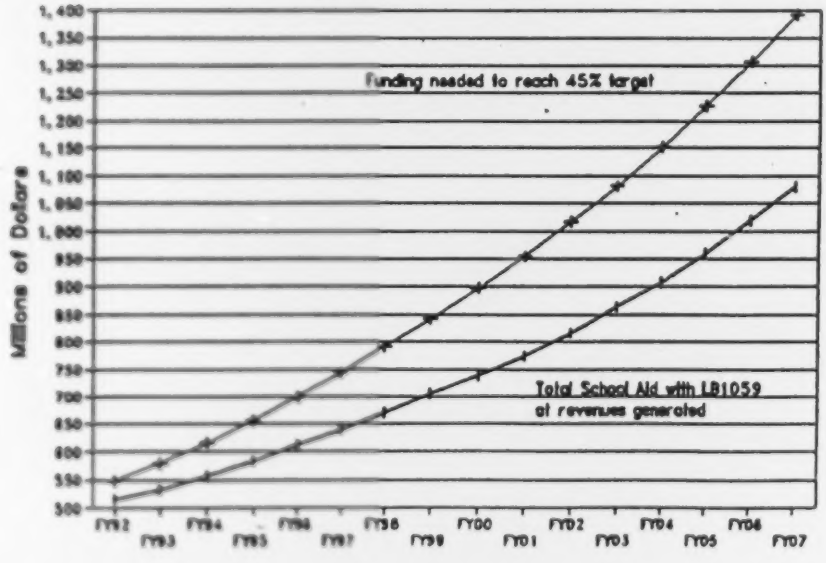
LONG TERM TREND - LB1059

(All numbers in millions of dollars)

Year	Growth in School Spending	Aid Needed for 45% Target	Total Aid Projected	% of Spending Achieved	Shortfall from 45% Target
FY1991-92	6.60%	548.2	515.8	42.34%	(32.4)
FY1992-93	5.50%	578.2	532.3	41.43%	(45.9)
FY1993-94	6.50%	615.6	556.7	40.70%	(58.9)
FY1994-95	6.50%	655.4	583.9	40.09%	(71.5)
FY1995-96	6.50%	697.8	611.5	39.44%	(86.2)
FY1996-97	6.50%	742.9	638.7	38.69%	(104.2)
FY1997-98	6.50%	791.0	668.9	38.05%	(122.1)
FY1998-99	6.50%	842.2	704.4	37.64%	(137.8)
FY1999-00	6.50%	896.8	736.2	36.94%	(160.6)
FY2000-01	6.50%	954.8	773.7	36.46%	(181.1)
FY2001-02	6.50%	1,016.7	816.7	36.15%	(200.0)
FY2002-03	6.50%	1,082.6	863.6	35.90%	(218.9)
FY2003-04	6.50%	1,152.7	907.9	35.44%	(244.8)
FY2004-05	6.50%	1,227.5	959.4	35.17%	(268.1)
FY2005-06	6.50%	1,307.1	1,017.9	35.05%	(289.1)
FY2006-07	6.50%	1,391.8	1,081.0	34.95%	(310.9)

STATE AID TO EDUCATION

45% Target vs. Projected Aid



SOURCE: Projected Impacts of LB1059, Legislative Fiscal Office, December 11, 1992.

APPENDIX I

Who Pays the Cost of Education for Wards When Wards are Placed Out-of-District				
Placement	Pre-LB3	LB3	LB3 Commission	LB92
Non-ward in Legal Family Home Regular Education	School District Resources/ Equalization Aid	School District Resources/ Equalization Aid	School District Resources/ Equalization Aid	School District Resources/ Equalization Aid
Non-ward in Legal Family Home Special Education	School District Resources/ Equalization Aid/Special Ed. Fund	School District Resources/ Equalization Aid/Special Ed. Fund	School District Resources/ Equalization Aid/Special Ed. Fund	School District Resources/ Equalization Aid/Special Ed. Fund
Ward in Foster Family Home Regular Education in Public School	DSS Pays Public School District	School District Resources/ Equalization Aid	School District Resources/ Equalization Aid	School District Resources/ Equalization Aid
Ward in Foster Family Home Special Education in Public School	DSS Pays Public School District	School District Resources/ Equalization Aid/Special Ed. Fund	DSS Pays Public School District*	School District Resources/ Equalization Aid/Special Ed. Fund
Ward in Day Treatment School Living in Foster Family Care	DSS (if DSS places ward) Pays Day Treatment School	School District Resources/ Equalization Aid	DSS (if DSS places ward) Pays Day Treatment School*	School District Resources/ Equalization Aid
Ward in Approved Residential Facility-Attending Public School	DSS Pays Public School District	DSS Pays Public School District	DSS Pays Public School District	School District Resources/ Equalization Aid**
Ward in Detention Center	DSS Pays Center	DSS Pays Center	DSS Pays Center	Unknown (County Funds?)
Ward in Approved Non-Public Residential Facility w/ Special Ed. School (In and Out of Nebraska)	DSS Pays Residential Facility	DSS Pays Residential Facility	DSS Pays Residential Facility	School District Resources/ Equalization Aid/Special Ed. Fund
Ward in Approved Non-Public Residential Facility w/ Regular Ed. School (In and Out of Nebraska)	Payment Constitutionally Prohibited Art. 7, Sec. 11	Payment Constitutionally Prohibited Art. 7, Sec. 11	Payment Constitutionally Prohibited Art. 7, Sec. 11	Payment Constitutionally Prohibited Art. 7, Sec. 11

NOTE: State Aid through the equalization formula is paid to school districts two years in arrears.
DSS = Nebraska Department of Social Services
** = Proposed changes from LB3*
*** = add Special Education Fund if appropriate*
Source: Legislative Program Evaluation Unit 1993

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Westside Community Schools, Omaha, NE

Polly Feis, Assistant Commissioner
(Designee for Joe Lutjeharms, Commissioner NDE)

Mary Fraser Meints, Program Specialist
(Designee for Mary Dean Harvey, Director NDSS)
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LB 3 Commission Report

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Introduction

The Commission expresses gratitude to the Legislature for the opportunity to examine and make recommendations regarding the very important issue of the provision of educational services to children/youth who are state wards. The passage of Legislative Bill 3 (LB 3), which was signed by the Governor on October 5, 1992, instructed the Director of Social Services and the Commissioner of Education to appoint a joint commission for the purpose of examining the procedure for funding the education of wards of the state and wards of the court. The Commission was charged with the responsibility to:

- identify and define all potential placements for wards;
- examine the effect of such placements on the education of wards;
- determine the entity responsible for providing for the education of wards;
- study the method of identifying special educational needs of wards;
- examine the methods of reimbursement under the Special Education Act;
- examine methods of payment of state aid relative to wards; and
- study any other related matters.

The Commission was to report its findings, conclusions, and recommendations to the Nebraska Legislature on/or before January 15, 1993.

Senator Withem's comments during the floor debate of LB 3 on September 30, 1992, helped narrow the Commission's immediate task . . . "They [Commission] are not likely to have time to get into all of those in great detail. My recommendation would be a fast track look at all of these funding type questions. And hopefully, the end of the process that is enacted will not come on January 15, 1993, although that would be the deadline by which we, the Legislature, would expect at least some recommendations on these specific questions here of where the education funding comes from and who's responsible for it . . ."

The Commission was established and comprised of: one Nebraska Department of Education and one Nebraska Department of Social Services representative; ten school districts/educational service unit providers; ten private providers; one foster parent representative; four Department of Education and four Department of Social Services resource staff; and two Legislative resource staff. The Commission met on three occasions: November 16, 1992, December 9, 1992, and January 6, 1993. The Commission has compiled the following report including findings and recommendations for revising LB 3. The Commission wishes to emphasize that there are many more issues impacting state wards beyond the scope and time limits of this Commission. Such other related matters have been listed in Part IV (Unresolved Issues) of this report.

Basic Assumptions of Commission When Preparing Report

1. The Constitution, Article VII, Section 1, provides as follows:

   "The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision."

   The state is meeting this responsibility through a variety of means, including delegation to local school districts. The state and public schools act as partners in providing educational services.

2. The State of Nebraska needs to maintain the state/local government "partnership" emphasis as established by the Nebraska Legislature in the Family Policy Act and the Juvenile Services Act.

3. All children/youth experience the basic human growth and development process, yet their capabilities and potential are affected by a wide variety of changing social, physical, emotional, intellectual, financial, and spiritual needs. In many ways, children/youth who are wards and children/youth who are not wards are the same, yet in many ways they are different or unique. The very fact that some children/youth are made wards means they and their parents have special problems with which they need state assistance. This Commission acknowledges that there are other children/youth and families who have similar problems but for various reasons have not gained access to the state ward system.

4. LB 3 has minimal impact upon delivery of and responsibility for providing regular education services.

5. LB 3 does have a significant impact upon delivery of and responsibility for providing special education services. The crisis nature of out-of-home placements of court and state wards, with little or no advance notice to school districts, results in additional administrative and planning requirements such as: the development of Individual Education Plans (IEPs) (often without complete school records); the contracting of services; and the hiring of additional staff. Special education services, in terms of developing a program and in actually providing the services, are significantly more expensive to local school districts than the provision of services to non-special education children/youth.

6. There are five categories of placement resources:

   A. **Foster Family Homes**
   Foster family homes can provide care for 9 or fewer children/youth.

   B. **Group Homes/Child Care Agency**
   Group homes can provide care for 12 or fewer children/youth in a residential setting; a child care agency provides care for many children/youth in separate buildings, e. g., Uta Halee, Nebraska Boys Ranch, Campus House, Youth Service System.

   C. **Institutions/Psychiatric Hospitals**
   e.g. Lincoln Regional Center, Richard H. Young, St. Joseph Center for Mental Health

   D. **Juvenile Detention Centers**
   Douglas County; Lancaster County; Panhandle; and Northeast Nebraska Juvenile Services

   E. **State Juvenile Correctional Facilities**
   Kearney and Geneva Youth Development Centers (not eligible for state ward education funds)

7. All services to children/youth must be stable and equitable, maintain high quality, and take into account the total needs, challenges, and strengths of the whole child and family. All agencies and providers of services must collaborate with one another and work as a team.

Findings & Perceptions

All children/youth of the state have a right to a public education. By statute, children/youth with verified disabilities have an additional right to an appropriate education. All children/youth have multi-faceted needs: educational, emotional, familial, financial, physical, spiritual, and social. These needs are most appropriately dealt with by looking at the child as a whole. The Legislature gives school districts the authority to educate all children/youth. By statute, the Department of Social Services has the authority to determine the care, placement, medical services, psychological services, training, and expenditures on behalf of the wards of the Department of Social Services. Even though there are similarities between wards and non-wards, there are distinct differences. By and large, there is greater likelihood that children/youth who are wards will be at risk, i.e., children/youth who tend to move frequently, children/youth who often need emergency placements, and children/youth for whom there is a significant deficit in meeting the above mentioned needs. Therefore, there should be a process which allows flexibility, yet establishes consistency, to address these special situations and the needs of children/youth who are wards of the state.

Statutes and agency policies, practices, and regulations often require systems to compartmentalize the needs of a children/youth who are wards. This means that at times the systems deal with a ward's educational needs as though they can be separated from the social, emotional, and other needs. Systems are not presently integrated to meet the needs of children/youth.

State ward education funds are available to children/youth who are wards of the state and includes wards of the Department of Social Services, Department of Correctional Services, and court systems. There is a lack of complete data and where there are data, each entity has its own method of gathering data. These data may be gathered at a point in time which may differ from agency to agency, or data may be gathered over a year's period of time; this may be a fiscal year, school year, or calendar year. Add to this the differences in data collection by school districts and the Department of Education regarding education related data, and there is confusion. **Thus, the analysis of data regarding specific trends or the financial effects of changes is difficult to obtain and interpret and easy to misinterpret.**

Impact of LB 3

The passage of LB 3 requires school districts to be financially responsible for the education of state wards residing in family foster care. Four areas of impact have been identified and will be discussed below:

1. **Day Treatment**

   For the purpose of this report, the Commission defines day treatment as the provision of services including education and therapy on a partial-day basis and operated by an entity other than the school district.

   Decisions regarding educational services are made by school districts in conjunction with the parent/surrogate. If there is a disagreement, the parent/surrogate, school district, and Department of Social Services have the right to appeal a special education decision. Prior to LB 3, school districts were typically not involved in the decision by the Department of Social Services to place a child in a day treatment program since the program was viewed as a whole and not just an educational program, nor did the school district incur any financial responsibility. With the passage of LB 3, school districts are now financially responsible for all wards in family foster care.

   Participation in a day treatment program is influenced by proximity to programs. Consequently the Department of Social Services must place the child in a foster home

within reasonable travel distance to the program to make it possible to attend day treatment and return home at night. Shifting financial responsibility and requiring school involvement in placement may further limit possible day treatment options.

2. **Special Education**

Prior to the enactment of LB 3, the resident school district had financial responsibility to provide a free, appropriate public education for a school age student with a disability who was a ward of the state or court living in a foster home within his or her parents' resident district. If the student was placed by a county or district court or state agency in a foster home outside his or her parents' resident district, the Department of Social Services had financial responsibility for a free, appropriate public education.

With the enactment of LB 3, school districts have financial responsibility to provide a free, appropriate public education for all children/youth with disabilities who are wards of the state or court living in foster homes within their school district boundaries, regardless of residency of the parent prior to becoming a ward of the state or court.

Both prior to and with the enactment of LB 3, the Department of Social Services is financially responsible to pay for a free, appropriate public education for children/youth with disabilities who are wards of the state or court who are placed by the Department of Social Services in placements other than foster homes (child care agency, institutions, and juvenile detention centers) outside their parents' resident district.

3. **General Fund Savings**

LB 3 eliminates the direct payment to school districts which provided educational services to a state ward living in a family foster home outside of the district of his/her parents' residence. In FY 1993-94, the first full year this will be in effect, the projected general fund savings is $1.8 million. Of this total, $1.6 million is a reduction in the reimbursement for regular education. Two hundred thousand dollars is a reduction in reimbursement for special education and transportation costs.

4. **State Aid to Schools**

For state aid purposes under LB 3, wards in foster homes are treated as any other resident students in the district. Wards revenues are currently "accountable receipts" in the LB 1059 equalization formula, and children/youth who are wards are currently counted as "formula students" as part of each school district's Average Daily Membership (ADM). If children/youth continue to be served by the district, and no payments are made by the Department of Social Services, equalization aid (to the extent the district qualifies to receive it) would flow into such districts.

Assuming a fixed state aid appropriation, the result of LB 3 would likely be an increase in the state aid formula's Local Effort Rate, effectively shifting equalization aid from districts that didn't lose ward payments to districts that did.

Commission Recommendations

1. The cost of education of state wards who reside in Group Homes, Child Caring Agencies, Juvenile Detention Centers, and institutions as defined by Nebraska State Statute and Regulation shall be paid for by the Department of Social Services as set out in LB 3.

2. LB 3 provides that the cost of education of non-disabled (not verified under Rule 51) wards residing in foster homes shall be the financial responsibility of the school district in which the foster home is located. LB 3 should be amended to provide that the cost of education of non-disabled (not verified under Rule 51) wards residing in foster homes and attending public schools shall be the financial responsibility of the school district in which the foster home is located. This a change from the current LB 3.

3. The cost of special education services for any ward with a disability (verified under Rule 51) placed in a public school setting outside his or her parents' resident school district shall be the Department of Social Services' financial responsibility. This includes placement in any setting, including family foster homes. This is a change from the current LB 3.

   ADDITIONAL STATE GEN. FUND IMPACT: FY-94 $216,000
   FY-95 $262,000

4. The cost of education for any ward living in a family foster home who is unable to participate in the education program provided or contracted for by the responsible school district because of his or her participation in a treatment program arranged for by the Department of Social Services will be the Department of Social Services' financial responsibility. This is a change from the current LB 3.

   ADDITIONAL STATE GEN. FUND IMPACT: Unknown

5. An evaluation of the Education Program for State Wards, including the impact of LB 3, should be conducted.

6. Funding of the Department of Education and Department of Social Services for the purpose of educating state wards should not be reduced. Additional funding will be required to meet Commission recommendations.

Unresolved Issues

The following issues have been identified as critical and needing additional consideration to assure that the Education Program for State Wards operates in an effective and efficient manner.:

1. The availability of less-restrictive treatment options, emergency shelter, and foster family placements is insufficient in number and variety.

2. Availability and funding are insufficient to provide an appropriate continuum of care for programs, services, and facilities for children/youth and families.

3. Shifting financial responsibility to the local government level creates an additional burden on local property taxpayers.

4. The frequent movement of state wards tends to reduce the opportunities to identify and meet children/youth needs.

5. Current procedures for counting children/youth with disabilities who are wards of the state or court do not assure children/youth are included in all appropriate counts which could generate funds.

6. Court ward data are not collected on a statewide basis. A child welfare computer system and tracking and data collection system for all state wards does not currently exist. This information is critical for overall planning by the Department of Social Services, the Department of Education, the Department of Correctional Services, the Legislature, courts, school districts, and other agencies.

7. Some children/youth are made state wards for the sole purpose of accessing medical treatment or education services.

8. There is no mechanism across all agencies for the uniform implementation of policy, joint decision making, and resolution of disputes for state wards.

APPENDIX K

Descriptions of Types of Living Arrangements
For LB 3 Commission

Foster Family Home

- A private single-family living unit, under one roof which provides 24-hour care to children who are not related to the foster parent by blood or adoption.

- Foster parents provide care for no more than nine children under 19 years of age, including children related to the foster parent by blood or adoption. No more than six children may be age 12 or younger. There must be one adult for every six children.

- Licensed by NDSS if they provide care for children from more than one family. The Department of Correctional Services licenses its own homes.

- Licensed homes must meet requirements regarding square feet per individual, lighting, bedrooms, heating, water, nutrition and food service, hazardous materials and equipment, outdoor recreational area, waste disposal and safety.

- A fire safety inspection must be done if four or more children, who are not related to the caregiver, reside in a foster home. A sanitation inspection must be done if a foster parent cares for seven or more children.

- Pre-service and on-going training are required by statute.

Licensed Group Homes

- A home operated under the auspices of an organization which is responsible for providing social services, administration, direction and control for the home and which is designed to provide 24-hour care for 12 or fewer children in a residental setting.

- Fire and safety inspections required for homes licensed for four or more. A sanitation inspection is required for homes licensed for seven or more. Group homes also have an administrative component plus a program component. This includes requirements for staff, a program description, staff ratio requirements, policies, written discipline policies for the children, and a comprehensive care plan for each child.

- There are requirements on the physical setting of a group home facility.

- Training is required for direct child care staff and supervisors.

Child Caring Agency

- An organization incorporated to provide care for children in buildings maintained for that purpose. All state and local standards for fire protection, health, sanitation and zoning must be met. A child caring agency must incorporate as required by state statutes. It must have a written statement of its functions, policies and programs. A governing board representative of the agency's constituency is required. The agency must meet requirements regarding financial records, administration, records and reports, and policies regarding personnel.

- There are requirements for the physical setting of a child caring agency facility.

- A child caring agency must employ one direct full-time child care staff for an average of six children under care.

- An agency must have a program description, personnel policies, staff ratio requirements, written discipline policies for children, comprehensive care plans, and records on each child. Training is required for direct child care staff and supervisors.

Source: Revised Statutes of Nebraska, 1943, Article 19, Care of Children Section 71-1901-1905 NDSS policy manual 474 NAC chapter 6.

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